

No. 9(1) 81-6Lab/14330.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s A.K. Packing, Plot No. 25, D.L.F., Industrial Area, Mathura Road, Faridabad:—

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT, HARYANA,
FARIDABAD

Reference No. 567 of 1980

between

SHRI ALI MOHD., WORKMAN AND THE MANAGEMENT OF M/S A.K. PACKING, PLOT
NO. 25, D.L.F., INDUSTRIAL AREA, MATHURA ROAD, FARIDABAD.

Shri Yoginder Singh for the workman.

Shri R.C. Sharma for the respondent-management.

AWARD

This reference No. 567 of 1980 has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. ID/FD/216-80/61134, dated 22nd December, 1980, under section 10(i)(c) of the Industrial Disputes Act, 1947 for adjudication of the dispute existing between Shri Ali Mohd., workman and the management of M/s. A.K. Packing, Plot No. 25, D.L.F., Industrial Area, Mathura Road, Faridabad. The terms of the reference was :—

Whether the dismissal of Shri Ali Mohd. was justified and in order? If not, to what relief is he entitled?

After receiving this reference, notices were issued to the parties. The parties appeared and filed their pleadings. According to the claim statement and demand notice, the case of the workman is that the workman was working in the respondent factory since 19th May, 1971 as helper at a salary of Rs. 324 per month. On 22nd July, 1980 he was charge-sheeted on false and concocted grounds, and constituted a domestic enquiry against the workman in which the respondent did not give the reasonable facilities demanded by the workman. The respondent appointed some outsider as an enquiry officer and enquiry was held not in the premises of the factory but at a strange place to which the workman objected on the ground of coercion. The witnesses of the workman were threatened of dire consequences which the workman had complained to the Labour Officer. The workman was not given the report of the enquiry officer and no opportunity was given of making representation. The workman was victimized because he was the president of the union and to hinder legitimate trade union activities. The dismissal of the workman was illegal, unjustified and arbitrary. The workman prayed for his reinstatement with full back wages and continuity of service.

The case of the respondent according to its written statement is that the claimant working was charge-sheeted for committing serious act of misconduct,—vide charge-sheet dated 22nd July, 1980. The workman replied and after consideration of his reply the domestic enquiry was constituted against the workman and an enquiry officer was appointed. The enquiry was held in presence of the workman and was given full opportunity to cross-examine the management witnesses and give his own defence. The day to day proceedings of the enquiry were also supplied to the workman. All the relevant documents were also supplied to the workman before the start of the enquiry. The enquiry officer submitted his enquiry findings and on that the second show-cause notice proposing to discharge the workman was also given and after his reply received, the findings of the enquiry officer and the reply of the workman was considered and found unsatisfactory so the discharge order was issued on 10th October, 1980. So the action of the management is quite justified, legal and proper and according to Model Standing Orders which are applicable to the management. On the pleadings of the parties, the following issues were framed :—

- (1) Whether a fair and proper domestic enquiry conducted by the management? If so, to what effect?
- (2) Whether the dismissal of services of the workman was justified and in order? If not, to what relief is he entitled?
- (3) Relief?

As per order of my predecessor issue No. 1 to be treated as preliminary issue. My issue-wise findings is as under :—

Issue No. 1

Issue No. 1 is whether the domestic enquiry is fair and proper. On this issue the representative of the respondent argued that on 22nd July, 1980 the workman threatened Shri Arora, the time office clerk on the water

tap in the lunch time while the workman was taking water and Shri Arora also came there to take water and they started abusing each other. The workman threatened Mr. Arora that he will see him outside the factory and that threaten amount to threatening to kill. The workman denied the charges and after consideration of workman's reply the respondent-management constituted a domestic enquiry for the charges against the workman. The enquiry was started on 22nd July, 1980 which is Ex. M-24 in which the management produced 3 witnesses and the workman produced 5 witnesses. Full opportunity was given to the workman in the enquiry to cross-examine all the witnesses. After going through the enquiry proceedings the enquiry officer had given enquiry report which is Ex. M-25. The enquiry officer had given all facilities to the workman which he demanded during the course of enquiry proceedings. He was given full opportunity to cross-examine the management witnesses and give his own defence witnesses. So the enquiry held by the enquiry officer was quite fair and proper in the eye of law.

The representative of the workman argued that the workman was employed with the respondent in the year 1971 and he was the president of the workers union. There was no single instance of his misbehaving in the past. The charge-sheet Ex. M-1 was served on 22nd July, 1980 on minor charge of verbal altercation with the time office clerk without any provocation and entirely unconnected with the business of the respondent. The same is not included in the list of misconduct under section 20(i) of Model Standing Order applicable in the respondent concern as admitted by MW-1 in the enquiry at page 5. The charge-sheet was duly replied as Ex. M-3 denying the charge-sheet and explaining the whole story. The reason of implication on the grounds of union activities. The enquiry notice Ex. M-2 was served thereafter. Shri Anand Sarup an employee of Government Press was appointed as enquiry officer and the venue of the domestic enquiry was fixed outside the premises of the factory and at the office of Faridabad Industrial Association. The workman objected both these things,—vide Ex. M-13 which was declined by the respondent,—vide Ex. M-11. The workman demanded other facilities to participate in the enquiry,—vide Ex. M-5 which was also declined. The facilities were according to the principles of natural justice, as the list of documents relied upon by the respondent, copy of the standing orders, list of witnesses, representation of the workman and the workman shall not be victimized on the grounds of adducing evidence in the favour of the claimant workman. These demands were natural facilities ought to be provided prior to start of the enquiry. Even then the workmen participated in the enquiry. Even on the first day of enquiry the behaviour of the enquiry officer was biased as he did not give the proceeding page on which the workman wrote a letter to the enquiry officer which is Ex. W-10 and reply of the enquiry officer is Ex. W-11. The findings of the enquiry officer is not according to the enquiry proceedings. There is contradiction in the statements of MW-3 and MW-2 in the enquiry regarding their presence at the place of occurrence which is very material one. In the enquiry the complainant MW-2 has admitted that he was neither beaten nor abused nor he was misbehaved. The witness MW-2 has also admitted that the cause of altercation was suspension of Shri Triloke in which he had no hand as he was a petty clerk only. The witness MW-3 in the enquiry Shri Umesh Ahuja who is alleged to be with the complainant Shri Radhey Sham Arora stated in his examination-in-chief that when they both reached at the tap the workman came and said "Let me have the water first" and in his cross-examination he has stated that Shri Ali Mohd. workman was already there when he reached at the tap. He further stated that he did not abuse the complainant Shri Arora. He only gave the threatening. The workman's representative argued that the said witnesses could not be relied upon and believed. The management has produced only the staff member as their witnesses and nothing among the workers. If there was any quarrel when it was a lunch time, the other workers were also present there. The enquiry officer has failed to believe the testimony of the witnesses of the workman who have come from workman's side and they were five in numbers. All the defence witnesses had corroborated the testimony of the workman without any contradiction. The enquiry officer had noted at the end of the enquiry that the copies of the enquiry proceedings shall be supplied to the workman claimant by the management, but the management has failed to supply the same. So that the workman may not reply the show-cause notice. Even then the show-cause notice was replied,—vide ex. M-27 while inflicting the punishment of dismissal the provisions of clause 20(g) was not followed as his previous record, gravity of offences and other circumstances such as being the leader of the union and no loss to the management as a result of alleged misconduct were not taken into account.

After hearing the arguments of both the parties and going through the file I feel that there is some force in the arguments put forward by the workman's representative. The respondent has not denied specifically that the workman was not president of the union of the factory. In the charge-sheet there was no big a fault of the workman. The complainant had said nothing in his complaint to the manager except this that the workman has threatened the complainant that he will see him outside the factory. He has not stated even in his statement in the enquiry proceedings that the workman had abused or misbehaved. In my view this was not the matter to be decided after constituting the domestic enquiry and going the whole and even if I say that the enquiry is fair and proper even then the punishment awarded by the management is very heavy. There are contradiction in the witnesses of the management in the enquiry proceedings whereas the defence witnesses have corroborated the story of the workman in their statements and there is no contradiction in their statements. So there is a force in the arguments of the workman's representative as the respondent-management has failed to hold the fair and proper enquiry against the workman. The respondent had denied the facilities which are very essential in the interest of justice to provide the workman. So I hold that the domestic enquiry was not fair and proper in the eye of law. So this issue is decided in favour of the workman and against the respondent-management.

Issue No. 2 :

Issue No. 2 is as per reference. The representative of the management and the workman did not reserve their right for further proceedings in the case in this reference. They have argued the case fully and not given any

application at the time of arguments or before that after deciding the preliminary issue they should be given chance for further evidence. So according to the desire of the representatives I proceed further with this issue. When issue No. 1 has been decided in favour of the workman and whole enquiry proceedings has been discussed in Issue No. 1 on which the termination order was based. If the enquiry is not proper then the order is not proper and justified. The fault of the workman is not so high on which such a big punishment is given to him. If there was some little fault of the workman he should have been given a lesser punishment to amend him for further. So in my view, the workman was victimized due to his union activities as he was president of the union of the factory. So the order of termination of the services of the workman is not justified and proper and the workman is entitled for reinstatement with full back wages and continuity of service. No order as to costs. This be read in answer to this reference.

Dated the 13th November, 1981.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana, Faridabad.

Endst. No. 3302, dated 27th November, 1981.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Dispute Act, 1947.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

No. 9(1)81-6-Lab/14448. — In pursuance of the provisions of section 17 of the Industrial Disputes Act 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workmen and the management of M/s Amar Foundry, Plot No. 105, Sector 6, Faridabad.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT,
HARYANA, FARIDABAD

Reference No. 348/80, 349/80, 350/80, 347/80, 351/80, 352/80, 353/80, 355/80, 356/80, 357/80,
358/80, 359/80, 361/80, & 364/80

between

SARVSHRI JHARI MANDAL, SURJU SOHNI, MAHARAJ SINGH, JYOTISH LAL, BHOLA PRASAD, RUDAL, BHIKHAN PANDIT, KALAM SINGH, BINDESHWAR SAINI, RAM CHANDER, RAM LEPKHAWAN SAHANI, SUBE SINGH, SHAMBHU PANDEY, & RAM SARUP, WORKMEN AND THE MANAGEMENT OF M/S AMAR FOUNDRY, PLOT NO. 106, SECTOR 6, FARIDABAD.

Shri Darshan Singh for the workmen.
Shri R.C. Sharma for the respondent management.

AWARD

These reference Nos. 347/80, 348/80, 349/80, 350/80, 351/80, 352/80, 353/80, 355/80, 356/80, 357/80, 358/80, 359/80, 361/80, 364/80, have been referred to this Court by the Hon'ble Governor of Haryana, — vide his order No. ID/FD/54-80/39370, ID/FD/54-80/39376, ID/FD/54-80/39382, ID/FD/54-80/39388, ID/FD/54-80/39394, ID/FD/54-80/39390, ID/FD/54-80/39906, ID/FD/54-80/39918, ID/FD/54-80/39924, ID/FD/54-80/39330, ID/FD/54-80/39336, ID/FD/54-80/39342, ID/FD/54-80/39954, ID/FD/54-80/40002, dated 4th August, 1980, under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between S/Shri Jhari Mandal, Surju Sohni, Maharaj Singh, Ram Sarup, Jyoti Lal, Bhola Prasad, Rudal, Bhikhan Pandit, Kalam Singh, Bindeshwar Sahni, Ram Chander, Ram Lekhawan Sahani, Sube Singh and Shambhu Pandey, workman and the management of M/s Amar Foundry, Plot No. 106, Sector 6, Faridabad. The term of the references was —

Whether the termination of services of S/Shri Jhari Mandal, Surju Sohni, Maharaj Singh, Ram Sarup, Jyotish Lal, Bhola Prasad, Rudal, Bhikhan Pandit, Kalam Singh, Bindeshwar Sahni, Ram Chander, Ram Kekhawan Sahani, Sube Singh and Shambhu Pandey were justified and in order? If not, to what relief are they entitled?

After receiving these references, notices were sent to the parties. They appeared and filed their pleadings. According to the demand notice and claim statement, the cases of the workmen are that they were employed as under —

Serial No.	Name of the workman	Date of appointment	Wages per month	Designation	Date of termination
			Rs		
1	Shri Jhari Mandal	.. 18-6-79	250	Helper	9-4-80
2	Shri Surju Sahni	.. 31-3-77	250	Moulder	9-4-80

Serial No.	Name of the workman	Date of appointment	Wages per month	Designation	Date of termination
3	Shri Maharaj Singh	23-6-75	270	Moulder	9-4-80
4	Shri Ram Sarup	3-3-74	270	Grinder	9-4-80
5	Shri Jyotish Lal	3-1-76	260	Moulder	10-4-80
6	Shri Bhola Prasad	10-1-76	280	Helper	9-4-80
7	Shri Rudal	20-6-74	240	Worker	9-4-80
8	Shri Bhikhan Pandit	20-6-80	280	Operator	9-4-80
9	Shri Kalam Singh	17-2-75	250	Helper	9-4-80
10	Shri Bindeshwar Saint	1-3-76	250	Moulder	9-4-80
11	Shri Ram Chander	26-6-75	250	Coremaker	9-4-80
12	Shri Ram Lekhawan Sahani	2-3-76	250	Moulder	9-4-80
13	Shri Sube Singh	20-4-77	260	Moulder	9-4-80
14	Shri Shambhu Pandey	9-6-74	280	Moulder	9-4-80

and they were terminated illegally on 9th April, 1980 except Shri Jyotish Lal who was terminated on 10th April, 1980 because the management shifted their work in another foundry in the Faridabad by the same employer and it is simply for the victimisation of the workmen due to their union activities. So they are entitled for the reinstatement with full back wages and continuity of service.

The case of the respondent according to the written pleadings is that the workmen are incompetent and bad in law on the ground that the workmen were temporary workmen and termination by way of retrenchment on account of no orders in hand coupled with the non-availability of essential raw materials i.e. coal for running the foundry and pig iron. It was not possible to provide work in the foundry in this situation and the management decided to effect the retrenchment of surplus labour to enable them to save their losses and reduce their overhead expenses. So the retrenchment was effected on 9th April, 1980 and as the workmen were temporary and with less than one year of service so they were not entitled for any retrenchment compensation or notice pay under section 25-F of the Industrial Disputes Act, 1947. The retrenchment was made after the due notice to the Government and to the workmen and the workmen were offered their full and final settlement at the time of termination, but when they refused to accept the same so not through any orders. The workmen are gainfully employed since the retrenchment. The factory was having only 36 workmen in the month of March, 1980 and after retrenchment, this strength decreased to 5 workmen only. The respondent have not recruited any temporary or permanent workman in place of the retrenched workmen. The retrenchment was also effected due to the shortage of orders as the main work of the respondent was to manufacture the order goods, the items of the other main factory such as M/s Escorts Ltd. the respondent did not receive as much orders as they used to be and manufacturing activities was almost nil. The respondent has specially denied the fact that the respondent has shifted to another factory in Faridabad. The termination was on account of shortage of orders and shortage of raw-materials.

On the pleadings of the parties, the following issues were framed :-

- (1) whether the termination of services of the workmen are justified and in order? If not, to what relief they are entitled?
- (2) Relief?

The issues were framed on 17th October, 1980. On 6th January, 1981 on the request of the parties all cases were consolidated and it was ordered that the evidence will be recorded in the case of Shri Johri Mandal Reference No. 347 of 1980, because according to the statements of the representative of the parties, the cases are of the same nature, fact and law and against the same management. So these cases were consolidated. These are 14 cases of the same nature. My findings on the issues are as under :-

Issue No. 1 :

Issue No.1 is as per reference. On this issue the representative of the respondent argued that from February, 1980 on wards, there was a shortage and non-availability of essential raw-material which is like coal

and pig iron and similarly the respondent did not receive as much order from the other firms for manufacturing their items. The respondent factory was manufacturing the items of tractors on the orders of M/s Escorts and Eicher etc. The said big firms give no such big order to the respondent factory and on this ground the management of this factory, decided to effect retrenchment of the surplus labour to enable the management to reduce over-head expenses. He argued that according to the statement of Shri Darshan Kukreja, MW-1 the factor had a capacity of 2,400 tons per year as approved by the Industries Department, but in the year in question, the department give only 200 tons approx. The factory was facing a very serious conditions and it was difficult for the management to give salaries to its workmen. So the management of the factory decided to retrench the surplus labour in the month of March, 1980 and retrenched five persons in the month of March, 1980 according to the seniority list Ex. M-1 and Ex. M-2. He further argued that the respondent management sent a notice to Government on form 'P' which is Ex. M-3 and also submitted the list with form 'P' to inform the Government which is M-4 and terminated the persons after sending and displaying on the notice board of the factory both these letters. After completing the formalities under the law and informing the workmen, the respondent management retrenched the workmen on 9th April, 1980. The notices of these retrenchment were also sent to the permanent employees of their home addresses. Before retrenching these people the respondent management tried its hard for giving the work to the workmen and made lay off in the month of February and March, 1980. The notices issued to the workmen are Ex. M-5 to M-11. The respondent also sent the money orders to the workmen before these notices were sent. He further argued that the respondent sent the form 'P' to all the authorities of the Labour Department through registered A.D. The postal receipt are Ex. M-19 to M-24. He further argued that the respondent had produced the copies of 'P' form, seniority list and the proceedings before the conciliation officer. The acknowledgement receipt of full and final payment to the workmen and postal receipts for registered letters and the appointment letters of the workmen in every reference which are from Ex. M-42 to Ex. M-128 to prove their case. The respondent had taken the same plea before the Conciliation Officer and give their statement accordingly. He further argued that the workmen in all their claim statements and demand notices have taken a plea that the respondent management had shifted their work in another factory at Faridabad by the same employer which is denied in the written statements and produced the partnership deed of two different firms which are Ex. M-x and M-y in the court has stated by the witness MW-1 Shri Darshan Kukreja that there were three partners in the respondent factory who were Amar Nath, Om Parkash and Tej Bhan in a rented premises. Shri Amar Nath was having another factory in Faridabad of his own and there was no factory of the two other partners. Shri Amar Nath had a partnership firm with Shri Ram Dev and Tegi Bai with a different name which is known as M/s Vijay Engineering and Metal Works, which is very clear from these documents Ex. M-x and M-y. This factory is still in a sick position having only five workmen in the factory and after the retrenchment no person is employed in place of the retrenched persons. He further argued that the workmen are victimised as alleged by the workmen is quite wrong because according to witness MW-1 in his cross-examination he has denied that there was any union in the factory. The workmen were not retrenched due to the union activities, but due to the shortage of raw material and shortage of orders. How far the management can suffer the losses due to low production or paying the workmen without work when there was no raw material with the management so the decision of the management was according to the situation and circumstances of the factory. So no victimisation was made with the workmen but it was simply to save the position of the partners. So it was not termination which does not come under section 2(a) of the Industrial Disputes Act, 1947. So the references are bad in law. He further argued that there is no pleadings of the workmen that the retrenchment is illegal and void. There should be a reference about retrenchment in the court that whether the retrenchment is illegal and void, but as there no such reference with the court and the respondent management has retrenched the workmen and not terminated. He further argued that though the cases were consolidated the workmen has produced only one witness in the court Shri Sube Singh WW-1 and closed their case, who has stated in his cross-examination that he cannot say whether the factory which he has mentioned in his statement has different constitution and partnership. This shows that the workmen did not prove this fact on which they based their case that the respondent have started a different factory by some other name. They should have proved this fact to come to the conclusion so the workmen produced no evidence of their claims for the re-instatement in the factory.

The representative of the workmen argued that on this issue that the workmen are victimised due to the union activities of the workmen as stated by the workmen in his statement as WW-1. The witness has stated in his statement that the respondent management wants to finish our union so the respondent terminated the services of the workmen. There was a strike in the year 1977 due to certain demands of the workmen. He further argued that the respondent had not observed the provisions of Section 25-F of the Industrial Disputes Act, as no notices were served to the workmen and no money orders were sent on their addresses, without which provision of Section 25-F are not fulfilled and the retrenchment is illegal. The statement and the plea of the respondent is false and concocted story. There is no reduction in the orders of the other factory and there was no reduction in the quota supplied by the Industries Department. The respondent is receiving the same quota of the coal and pig iron from the Industries Department which is used in the other factory of the respondent management which they have constituted to retrench and spoil the poor workmen. He further argued that the factory is still in working condition and the workmen are working.

After hearing the arguments of both the sides and going through the file, I am of the view that the representative of the workmen took no pain to prepare these cases and justify the workers harassment and other difficulties. He has rather failed badly to prove any thing on the record. There is no corroboration of the

workmen's witness by another workman in the references though it is a consolidated cases of 14 workmen but one witness was examined in the court and who has also said nothing material to support his own case. On the other hand, the respondent management has proved that they made the retrenchment according to law by sending the notices to the Government and the workmen which are on the file. They also send the money orders on the address of the workmen. The receipt of the money orders are on the file. The notices for retrenching the workmen on Form 'P' was also sent to the Government with the seniority list of the workmen. The respondent took the same plea before the Conciliation Officer which is here in the Court. They have produced two copies of the partnership deed of different partners for proving that the other firm is not of the same partners which the workmen had alleged in their claim statements. So it is not a case of termination, but retrenchment as the respondent management has stated in the court that the position of the respondent factory is the same as it was in March, 1980 then there was no change still today in the factory position and the respondent management has taken the right decision according their conditions and circumstances to retrench the surplus labour which was a burden on them and creating losses to the partners and the workmen are not entitled to any relief.

No order as to costs. This be read an answer to these references.

Dated : the 27th November, 1981.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana, Faridabad.

Endorsement No. 3372, dated 4th December, 1981

Forwarded (four copies) to the Commissioner and Secretary to Government of Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court Haryana, Faridabad.

No. 9(1)-81-6Lab./14449.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. IV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workmen and the management of M/s. Amar foundary. Plot No. 106, Sector 6, Faridabad.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT,
HARYANA, FARIDABD

References No. 327/80, 329/80, 330/80, 331/80, 346/80, 3—28—, and 363/80

between

SARVSHRI KAMLESHWAR TIWARI, TULSI PANDIT, RAM CHALETAR, BRIJ KISHORE,
SUKH LAL, VED PARKASH AND DUDH NATH, WORKMEN AND THE MANAGEMENT OF
M.S. AMAR FOUNDARY, PLOT NO. 106, SECTOR 6, FARIDABAD

Present :—

Shri Darshan Singh for the workmen.
Shri R.C. Sharma for the respondent, management.

AWARD

These reference No. 327/80, 329/80, 330/80, 331/80, 346/80, 362/80, 363/80 have been referred to this Court by the Hon'ble Governor of Haryana, —vide his order No. ID/FD/54-80/39972, ID/FD/54-80/39984, ID/FD/54-80/39996, ID/FD/54-80/39864, ID/FD/54-80/39960, ID/FD/54-80/39966, dated 4th August, 1980 under section 10(i) (c) of the Industrial Disputes Act, 1947, existing between S/Shri Kamleshwar Tiwari, Tulsi Pandit, Ram Chaletar, Brij Kishore, Sukh Lal, Ved Parkash, Dudh Nath workmen and the management of M.s. Amar Foundary, Plot No. 106, Sector 6 Faridabad. The terms of the reference was :—

Whether the termination of services of S/Shri Kamleshwar Tiwari, Tulsi Pandit, Ram Chaletar, Brij Kishore, Sukh Lal, Ved Parkash, Dudh Nath were justified and in order ? If not, to what relief are they entitled ?

After receiving these references, notices were sent to the parties. They appeared and filed their pleadings. According to the demand notice and claim statement, the cases of the workmen are that they were employed as under :—

Serial No.	Name of the workmen	Date of appointment	Wages per month	Designation	Date of termination
1	Kamleshwar Tiwari	7-8-78	250	Helper	8-3-80
2	Tulsi Pandit	11-6-78	250	Do	8-3-80
3	Ram Chaletar	October, 78	250	Do	8-3-80
4	Brij Kishore	6-8-76	250	Do	8-3-80
5	Sukh Lal	1-11-74	280	Moulder	10-4-80
6	Ved Parkash	16-5-77	260	Mixtureman	9-4-80
7	Dudh Nath	9-2-79	250	Helper	8-3-80

and they were terminated, because the management shifted their work in another foundry in the Faridabad by the same employer and it is simply for the victimisation of the workmen due to their union activities. So they are entitled for the reinstatement with full back wages and continuity of service:

The case of the respondent according to its written statement is that the reference are in-competent and bad in law on the ground that the workmen were temporary workmen and termination by way of retrenchment on account of no orders in hand coupled with the non-availability of essential raw materials i.e. coal for running the foundry and pig iron. It was not possible to provide work in the face of this situation and the management decided to effect the retrenchment of surplus labour to enable and to save their losses and reduce their overhead expenses. So the retrenchment was effected on 8th March, 1980 and as the workmen were temporary and with less than one year of service so they were not entitled for any retrenchment compensation or notice pay under section 25-F of the Industrial Disputes Act, 1947. The retrenchment was made after the due notice to the Government and to the workmen and the workmen were offered their full and final due at the time of termination, but when they refused to accept the same so sent through money orders. The workmen are gainfully employed since the retrenchment. The factory was having only 38 workmen in the month of March, 1980 and after retrenchment, this strength decreased to 5 workmen only. The respondent have not recruited any temporary or permanent workmen in place of the retrenched workmen. The retrenchment was also effected due to the shortage of orders as the main work of the respondent was to manufacture the order goods, the items of the other main factory such as M/s. Escorts Ltd., The respondent did not receive as much orders as they used to be and manufacturing activities was almost nil. The respondent has specifically denied the fact that the respondent has shifted to another factory in Faridabad. The termination was on account of shortage of orders and shortages of raw-materials.

On the pleadings of the parties, the following issues were framed :—

1. Whether the termination of services of the workmen, are justified and in order ? If not, to what relief are they entitled ?
2. Relief ?

The issue were framed on 17th October, 1980. On 6th January, 1981 on the request of the parties all cases were consolidated and it was ordered that the evidence will be recorded in the case of Shri Kamleshwar Tiwari Reference No. 327/80, because according to the statements of the representative of the parties, the cases are of the same nature, fact and law and against the same management. So these cases were consolidated. These are seven cases of the same nature. My findings on the issues are as under :—

Issue No. 1—

Issue No. 1 is as per reference. On this issue the representative of the respondent argued that from February, 1980 onwards, there was a shortage and non availability of essential raw-material which is like coal and

Pig iron and similarly the respondent did not receive as much order from the other firms for manufacturing their items. The respondent factory was manufacturing the items of tractors on the orders of M/s. Escorts and Eicher etc. The said big firms give no such big orders to the respondent factory and on this ground the management of the factory, decided to effect retrenchment of the surplus labour to enable the management to reduce the over head expenses. He argued that according to the statement of Shri Darshan Kukreja, MW-I, the factory had a capacity of 2400 tons per year as approved by the Industries Department, but in the year in question, the department give only 200 tons approx. The factory was facing a very serious conditions and it was difficult for the management to give salaries to its workmen. So the management of the factory decided to retrench the surplus labour in the month of March, 1980 and retrenched five person in the month of March, 1980 according to the seniority list, Exhibit M-A. He further argued that the respondent management sent a notice to Government on form 'P' and also submitted the list with form 'P' to inform the Government and terminated the workmen after sending and displaying on the notice board of the factory both these letters. After completing the formalities under the law and informing the workmen, the respondent management retrenched the workman on 8th March, 1980. The notices of these retrenchment were also sent to the permanent employees of their home addresses before retrenching these workmen the respondent management tried its hard for giving the work to the workmen and made lay off in the month of February, 1980. Failure report of the Conciliation Officer, sent to the Government, along with list of the workmen, Form 'P' submitted to Government list of retrenched workmen attached with Form 'P'. Money order receipts sent to the workmen, appointment letter of the workmen are Exhibit M-1 to M-41, but the exhibits are not properly marked in the file of the court. The respondent had taken the same plea before the conciliation Officer and give their statement accordingly. He further argued that the workmen in all their claim statements and demand notices have taken a plea that the respondent management had shifted their work in another factory at Faridabad by the same employer which is denied in the written statements and produced the partnership deed of two different firms which are Exhibit M-x and M-y in the court and has stated by the witness MW-I Shri Darshan Kukreja that there were three partners in the respondent factory who were Amar Nath, Om Parkash and Tej Bhan in a rented premises. Shri Amar Nath was having another factory in Faridabad of his own and there was no factory of the two other partners. Shri Amar Nath had a partnership firm with Shri Ram Dev and Tegi Bai with a different name which is known as M/s. Vijay Engineering and Metal Works, which is very clear from these documents, Exhibit M-x and M-y. This factory is still in sick position having only five workmen in the factory and after the retrenchment no person is employed in place of the retrenched person. He further argued that the workmen are victimised as alleged by the workmen is quite wrong because according to witness MW-I in his cross examination he has denied that there was any union in the factory. The workmen were not retrenched due to the union activities, but due to the shortage of raw-material and shortage of orders. How far the management can suffer the losses due to low production or paying the workmen without work when there was of raw material with the management so the decision of the management was according to the situation and circumstances of the factory. So no victimisation was made with the workmen but it was simply to save the position of the partners. So it was not termination which does not come under section 2(a) of the Industrial Disputes Act, 1947. So the references are bad in law. He further argued that there is no pleadings of the workmen that the retrenchment is illegal and void. There should be a reference about retrenchment in the court that whether the retrenchment is illegal and void, but as there is no such reference with the court and the respondent management has retrenched the workmen and not terminated. He further argued that though the cases were consolidated the workmen has produced only one witness in the court Shri Kamlesh Tiwari, WW-1 and closed their case, who has stated in his cross examination that he can not say whether the factory which he has mentioned in his statement has different constitution and partnership. This shows that the workmen did not prove this fact on which they based their case that the respondent have started a different factory by some other name. They should have proved this fact to come to the conclusion so the workmen produced no evidence of their claims for the reinstatement in the factory.

The representative of the workman argued on this issue that the workmen are victimised due to the union activities of the workmen as stated by the workmen in his statement as MW-I. The witness has stated in his statement that the respondent management wants to finish one union so the respondent terminated the services of the workman. There was a strike in the year 1977 due to certain demands of the workmen. He further argued that the respondent had not observed the provisions of Section 25 F of the Industrial Disputes Act, as no notice were served to the workmen and no money orders were sent on their addresses, without which provision of section 25-F are not full filled and the retrenchment is illegal. The statement and the plea of the respondent is false and a concocted story. There is no reduction in the orders of the other factory and there was no reduction in the quota supplied by the Industries Department. The respondent is receiving the same quota of the coal and pig iron from the industries Department which is used in the other factory of the respondent management which they have constituted to retrench and spoil the poor workmen. He further argued that the factory is still in working condition and the workmen are working.

After hearing the arguments of both the sides and going through the file, I am of the view that the representative of the workmen took no pain to prepare these cases and justify the workers harassment and other difficulties. He has rather failed badly to prove anything on the record. There is no corroboration of the workman's witness by another workmen in the reference though it is a consolidated cases of 7 workmen but one witness was examined in the court and who has also said nothing material to support his own case. On the other hand the respondent management has proved that they made the retrenchment according to law by sending the notices to the Government and the workmen which are on the file. They also send the money orders on the address of the workman. The receipt of the money orders are on the file. The notices for retrenching the workmen on Form 'P' was also sent to the Government with the seniority list of the workmen. The respondent took the same plea

before the Conciliation Officer which is here in the court. They have produced two copies of the partnership deed of different partners for proving that the other firm is not of the same partners which the workmen had alleged in their claim statements. So it is not a case of termination, but retrenchment as the respondent management has stated in the court that the position of the respondent factory is the same as it was in March, 1980 then there was no change still today in the factory position and the respondent management has taken the right decision according to their conditions and circumstances to retrench the surplus labour which was a burden on them and creating losses to the partners and the workmen are not entitled to any relief.

No order as to costs. This be read in answer to this reference.

Dated the 27th November, 1981.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court Haryana,
Faridabad.

Endorsement No. 3371, dated 4th December, 1981

Forwarded (four copies) to the Commissioner & Secretary to Govt. of Haryana, Labour & Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947 with the request that acknowledgement of the above said award may be sent within week's time.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

* No. 9(1)81-6Lab./14550.-- In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workmen and the management of M/s High Polymer Labs (P) Ltd., Plot No. 8, Sector 25, Ballabgarh.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT, HARYANA, FARIDABAD

Reference No. 557 of 1980

Between

SHRI NARAIN DUTT PANDAY, WORKMAN AND THE MANAGEMENT OF M/S HIGH POLYMER LABS (P) LTD., PLOT NO. 8, SECTOR 25, BALLABGARH

Present:

Shri Hari Singh for the workman.

Shri R.C. Sharma for the respondent management.

AWARD

This reference No. 557 of 1980 has been referred to this Court by the Hon'ble Governor of Haryana vide his order No. ID/FD/118-80/60089, dated 15th December, 1980, under section 10(i)(c) of the Industrial Disputes Act, 1947 for adjudication of the dispute existing between Shri Narain Dutt Panday, workman and the respondent management of M/s High Polymer Labs (P) Ltd., Plot No. 8, Sector 25, Ballabgarh. The terms of the reference was :—

Whether the termination of services of Shri Narain Dutt Panday was justified and in order? If not, to what relief is he entitled?

After receiving this reference, notices were issued to the parties. The parties appeared and filed their pleadings. The case of the workman according to the demand notice and claim statement is that the workman was appointed as painter on 9th August, 1979 at a salary of Rs 413 per month and his work was satisfactory during the period. The respondent management terminated the services of the workman on 16th August, 1980 without assigning any reason. No charge-sheet was issued to the workman. The action of the respondent is illegal without jurisdiction and arbitrary and against the principles of natural justice.

The case of the respondent according to their written statement is that the claim statement of the workman is imaginary, misconceived, false and fabricated. In fact there had been no relationship of master and servant between

the parties and there is no question of getting the salary and termination of service by the respondent. The claimant might have worked as casual worker for a day or so and he had been paid by the respondent management. So it is not a case of termination of the reference may be dismissed.

On the pleadings of the parties, the following issues were framed :—

1. Whether the relationship of employer and employee exist between the parties ? If so, to what effect ?
2. As per reference ?

According to the orders of my predecessor Issue No. 1 be treated as preliminary. To prove this issue the respondent produced Ex M-1, Ex M-2 the voucher of the workman for the payment of his wages for few days and produced one witness MW-1 Shri V.K. Sharam, Office Assistant, time office and closed his case. The workman has come as his own witness as WW-1 and closed his case. My findings on Issue No. 1 is as under :—

Issue No. 1

Issue No. 1 is whether the relationship of master and servant exist between the parties. The representative of the management argued that the factory did not deal in painting work. They required the painter to paint its machines on occasions and the post of Painter is not permanent for the factory purposes. The claimant workman was engaged as daily worker @ Rs. 16 per day as a painter to paint machine. He worked in the month of January, 1980 for 24 days for which he was paid, —vide Ex. M-2 and again he was engaged for 4 days in the month of August 1980 and paid, —vide Ex. M-1. He was not an employee of the factory for permanent job. The witness of the respondent MW-1 has stated that he had brought the attendance register for the year 1979-80 in which there is no name shown of the workman. He has stated that they maintained the record of the workman employed in the factory. But the work done by the casual labour is not maintained permanently. It is maintained on loose papers so the name of the workman is not existed in the attendance register of the factory. The representative of the respondent argued that the workman has simply stated in the claim statement and demand notice that he joined the service of the respondent is the year 1979 as painter @ Rs. 413 p.m. but he has not produced any document to prove this fact or the workman has not given any evidence in this respect. If he was a permanent workman of the factory then he could arrange his co-workman to corroborate his statement which he has not done and it shows that he was not an employee of the respondent. So there was no relationship of master and servant exist between the parties.

The representative of the workman argued that the record is maintained by the respondent and the workman did not know what they maintained in their office. Actually the workman joined his service on 9th August, 1979 as painter. The respondent did not give any appointment letter or attendance card to the workman and he worked in the factory because he does not know these formalities to be maintained. So the workman has no record to show that he was a permanent employee of the factory.

After hearing the arguments of both the parties and carefully going through the file, I am of the view that the workman has failed to give any evidence of this issue. He has simply said in his statement that he was appointed on 9th August, 1979 as painter and he was terminated on 16th May, 1980 without any chargesheet. This statement of the workman did not prove that he was permanent employee of the respondent. So the respondent has proved this issue fully well, and this issue is decided in favour of the respondent management and against the workman.

Issue No. 2.

Issue No. 2 is as per reference. When Issue No. 1 which was treated as preliminary issue has been decided in favour of the respondent then there is no need to discuss issue No. 2 on merit. So the reference is bad in law and the workman is not entitled to any relief. No order as to costs.

This be read in answer to this reference

Dated the 14th November, 1981.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endorsement No. 3370, dated 4th December, 1981.

Forwarded (four copies) to the Commissioner & Secretary to Govt. of Haryana, Labour & Employment Deptt., Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.